

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 15-86(2)(DSD/TNL)

United States of America,

Plaintiff,

v.

ORDER

Ornella Angelina Hammerschmidt

Defendant.

This matter is before the court upon defendant Ornella Hammerschmidt's motion to reconsider her application to proceed in forma pauperis (IFP) on appeal. Although she failed to do so in her initial application, defendant has now submitted a complete application more fully stating her income, assets, and liabilities. Based on the motion and new application, and pursuant to Federal Rule of Appellate Procedure 24(a)(3), the court finds that defendant is financially eligible to proceed IFP.

Even if a defendant is found to be indigent, however, IFP status will be denied if the court finds that the litigant's appeal is not taken in "good faith." 28 U.S.C. § 1915(a)(3). Good faith in this context is judged by an objective standard and not by the subjective beliefs of the appellant. Coppedge v. United States, 369 U.S. 438, 444-45 (1962). To determine whether an appeal is taken in good faith, the court must decide whether the claims to be decided on appeal are factually or legally frivolous. Id. at 445. An appeal is frivolous, and therefore cannot be taken in good

faith, "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Although the court remains fully satisfied that defendant's sentence was appropriate and supported by the law, her appeal is not frivolous as that term has been defined by the Supreme Court. As a result, the appeal is considered to be taken in good faith for purposes of § 1915.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The motion to reconsider [ECF No. 179] is granted; and
2. The application to proceed in forma pauperis on appeal [ECF No. 178] is granted.

Dated: December 13, 2016

s/David S. Doty
David S. Doty, Judge
United States District Court